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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,451	09/21/2001	Steven M. Berman	RSW920010141US1	5778

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EXAMINER

ELMORE, REBA I

ART UNIT	PAPER NUMBER
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2187

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,451

Applicant(s)

BERMAN ET AL.

Examiner

Reba I. Elmore

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-75 are presented for examination.

Specification

2. The objection to the disclosure is **withdrawn** due to the amendment.
3. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

4. The rejection based on double patenting is **maintained** and repeated below.
5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-75 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending

Application No. 09/960448. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

present invention – claim 1

A method in a data processing system for minimizing inconsistency between a set of data sources, the method comprising:

sending a first signal indicating that new content is present for the set of data sources;

transmitting the new content to the set of data sources,

wherein the new content is unavailable for distribution by the set of data sources until a second signal is received by the set of data sources; and

sending the second signal to the set of data sources if an acknowledgment is received from all of the set of data sources.

09/960488 (claims 1 and 5)

A method in a data processing system for managing data in a network data processing system, the method comprising:

receiving a packet containing data associated with content *as the received packet is an indication or first signal of content being present*

distributing the content in response to a request for the content

wherein an indicator is located in the packet (content) is used for determining whether the content is enabled for content distribution *teaches the content is not available for distribution with the second signal being equivalent to the indicator within the data packet as the indication specifically indication whether or not the content or data packet is enabled for distribution*

is equivalent to sending the content when the indicator within the packet signals enablement of content distribution.

The conflicting claims are not identical, however, they are not patentably distinct from the claims of the present invention. The present invention is directed toward 'a set of data

sources' as opposed to 'a data processing system' or 'a network data processing system', however, the data processing system and/or the network data processing system includes multiple data sources within the individual systems as well as within connective nodes as further described in the specification of application 09/960488. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the systems to transfer or distribute content to multiple data sources because these systems are comprised of multiple data sources and the type of content described in the application disclosure includes types of content published and available for mass distribution (e.g., see paragraph 0007 of 09/960488). The preamble of claim 1 states the data processing system is for minimizing inconsistency between a set of data sources, however, nothing in the body of claims 1-75 is directed toward accomplishing this use and therefor has not been specifically addressed in the double patenting rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. This analysis has been detailed for claim 1 of the present application, however, the double patenting rejection is applied to all the claims, 1-75.

35 USC § 102

7. The rejection of claims 1-75 as being anticipated by Uchida is ***withdrawn*** due to the amendment and the remarks.

Response to Applicant's Remarks

8. Applicant's arguments, see the amendment and remarks, filed November 23, 2004, with respect to the prior art rejection have been fully considered and are persuasive. The rejection of claims 1-75 as anticipated by Uchida has been ***withdrawn***.

9. The rejection based on double patenting is ***maintained*** and repeated above. A terminal disclaimer does more than limit the extension of time for patents which are not patentably distinct which have either common inventorship or a common assignee. The ability to sell the patents separately is also a consideration.

Action is made Final

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reba I. Elmore, whose telephone number is (571) 272-4192. The examiner can normally be reached on M-TH from 7:30am to 6:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the art unit supervisor for AU 2187, Donald Sparks, can be reached for general questions concerning this application at (571) 272-4201. Additionally, the official fax phone number for the art unit is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center central telephone number is (571) 272-2100.



Reba I. Elmore
Primary Patent Examiner
Art Unit 2187

February 22, 2005